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From: Louis Ventre, Jr.

Sent: Friday, July 07, 2006 6:42 PM

To: Rfa-patents.comments

Subject: Comments on Small Entity Definition in Impact Assessment

The USPTO announced in a Federal Register notice on July 6, 2006 the opportunity for public comment on the establishment of the SBA's definition of "small business concern" for the purpose of paying reduced patent fees as the definition of "small business concern" for Regulatory Flexibility Act purposes for patent related regulations.

I agree with the SBA's objection to use of USPTO's definition as significantly under counting the impact of its proposed regulations, and in particular to the proposed changes to continuation practice on small businesses. While the proposed continuation rules are not specifically covered by the above referenced Federal Register notice, they serve as a good illustrative example.

Small businesses and single inventors are likely to be severely harmed both financially and in terms of protecting their inventions by the adoption of the continuation restrictions proposed by the USPTO. Small entity inventors often require the filing of patents with more than one invention, as defined by the USPTO. Any assessment that undercounts them, also under assesses the impact on them.

When the impact of a proposed regulation is likely to be great, the under assessment has even greater impact. For the proposed continuation practice regulations, it is well known that in order to gain full protection for what they have invented, small entities must include other inventions in their descriptions applied for in an application claiming only one invention.. By eliminating multiple continuations, the USPTO will force small entity applicants to forgo patent protection because the cost of multiple applications early in the invention timeline is beyond most small entity applicants. The harm to small business over large business in this case is likely to be great.

It is also not unusual for a small business to file as a large entity in order to avoid any possibility of the patent being subsequently invalidated for improper small entity claim. This practice too adds to under counting the actual number of small businesses impacted by USPTO's proposed continuation rules.

The USPTO change to continuation practice is ill advised and it will adversely affect significantly greater numbers of small business applicants than is reflected by using the narrower definition of small entities used by the USPTO.

In addition, now that patent lifetime is measured from the filing date of the application, the problem of "submarine" patents derived from continuations, is no longer of any relevance. To the extent that submarine patents are thought to

justify the new rules, the USPTO is solving a problem that no longer exists, and such solution is to the significant detriment of small business as compared to large business.

The bottom line is that small businesses, in much greater numbers than will be evident by assessing the number of small entity applicants, will be greatly disadvantaged over large entities by the USPTO's proposed rules on continuations. This discrepancy applies to all proposed rules analyzed for impact on small businesses.

Sincerely,

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